

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARIEVE O. RODRIGUEZ,	:	
DMD.	:	
	:	
Appellant,	:	
	:	
v.	:	
	:	C.A. No. N10A-10-014 CHT
	:	
JEFFREY W. BULLOCK,	:	
SECRETARY OF STATE	:	
	:	
Appellee.	:	

OPINION and ORDER

Upon Appeal From the Decision of the
Secretary of State

Submitted: January 18, 2011
Decided: July 7, 2011

William A. Gonser, Jr., of Gonser & Gonser P.A.; Attorney for
Appellant.

Patricia Davis Oliva, Esquire, Deputy Attorney General;
Attorney for the Appellee.

TOLIVER, JUDGE

Before the Court is the appeal filed by Marieve O. Rodriguez from the decision of the Secretary of State. Having considered Ms. Rodriguez's brief on appeal, the response thereto and the record in this case, that which follows is the Court's resolution of the issues so presented.

STATEMENT OF FACTS

The Appellant, Marieve O. Rodriguez, D.M.D., is a dentist who has maintained a practice in Wilmington, Delaware. On August 16, 2010, an adult complaint and warrant were issued charging Dr. Rodriguez with 20 counts of felony healthcare fraud and four counts of obtaining a controlled substance by fraud, forgery, deception or subterfuge. The complaint alleged that Ms. Rodriguez had been submitting bills to the state medicaid program that had never been performed and had been fraudulently writing prescriptions for Phentermine and Clonazepam, Schedule IV controlled substances. Ms. Rodriguez was subsequently arrested for those charges on August 17, 2010.

Following Ms. Rodriguez's arrest, the Delaware Department of Justice filed a complaint with the Department of State's

Office of Controlled Substances. The complaint noted that Ms. Rodriguez had been arrested for the aforementioned felony charges and further claimed that Ms. Rodriguez's practices presented a danger to the public health and safety in violation of 16 Del. C. § 4374(a)(7).

On September 24, 2010, Jeffrey W. Bullock, the Secretary of State, determined that Ms. Rodriguez's actions constituted a clear and immediate danger to the public health or safety. The Secretary suspended her license as a result, and issued an order to show cause pursuant to 16 Del. C. § 4735(a). That order also advised Ms. Rodriguez that she was scheduled to attend a hearing before the Controlled Substance Advisory Committee on December 1, 2010. Once that Committee rendered its recommendation to the Secretary, the letter continued, he would make his final determination regarding the status of Ms. Rodriguez's controlled substance registration.

For reasons that are presently unclear, Dr. Rodriguez requested that the hearing before the Controlled Substance Advisory Committee be postponed indefinitely. To date, no hearing has been held before that body regarding the charges against Dr. Rodriguez. She subsequently appealed to this Court on October 19, 2010.

DISCUSSION

The Court need not reach the merits of this appeal, as it is clear that Dr. Rodriguez must look to the Department of State for the relief she seeks. Delaware law strongly favors the policy that a party must exhaust all of her administrative remedies before it can seek judicial intervention.¹ That doctrine mandates that "where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy."²

Here, Ms. Rodriguez has not only failed to exhaust her administrative remedies, she has circumvented them. To hear Ms. Rodriguez's appeal after she asked for an indefinite postponement of her statutorily provided administrative remedy would defeat the policy behind the doctrine of exhaustion of

¹ *Levinson v. Delaware Compensation Rating Bureau*, 616 A.2d 1182, 1187 (Del.1992).

² *Id.* at 1187.

administrative remedies³ and infringe upon the role of the Controlled Substance Advisory Committee. That entity was statutorily created to hear matters exactly like the one *sub judice*. Ms. Rodriguez must exhaust all of her administrative remedies before that Committee before this Court may hear the merits of her appeal.

³ See *Id.* ("The policy which sustains the doctrine is one of maintaining the proper relationship between the courts and administrative agencies. It accomplishes this by: (1) favoring a preliminary administrative sifting process, especially when matters at issue are largely within the expertise of the involved agency; (2) avoiding interference with the administrative agency by withholding judicial action until the administrative process has run its course; and (3) preventing attempts to burden the courts by a resort to them in the first instance" (citations omitted)).

CONCLUSION

Based on the foregoing, the Court must conclude that Ms. Rodriguez has failed to exhaust her administrative remedies. This Court therefore lacks jurisdiction to hear the merits of this case. As a result, this litigation must be, and hereby is, **dismissed**.

IT IS SO ORDERED.

TOLIVER, JUDGE